

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 623 of 2007

Date of decision: 2.8.2007

Amar Nath

Petitioner

Versus

H.P. S.E. B. and others

Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, J.

***Whether approved for reporting?*¹**

For the Petitioner: Mr. Ajay Sharma, Advocate

For Respondent No.1: Mr. Shrawan Dogra, Advocate

For Respondent No.2: Mr. G.R.Palsra, Advocate

Per Deepak Gupta, J.(Oral)

This case has a rather interesting history. The petitioner approached the Electricity Board (hereinafter referred to as the Board) for grant of electricity connection for the house allegedly constructed by him in village Reyur, Tehsil Sadar, District Mandi, H.P. According to the petitioner he had constructed his house on Khasra No. 1575, but the respondent-Board was not giving him an electricity connection. A complaint in this regard was filed

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?***

by him in the year 2001. On 27th December, 2001 the District Forum directed the Board to release the electricity connection in favour of the present petitioner.

An appeal against the said order was filed by the father of the petitioner, i.e. respondent No. 2. This appeal was allowed on the ground that proper opportunity had not been given to respondent No. 2 to put forth his case and the case was remanded. In the meantime, it appears that the Board released electricity connection in favour of the petitioner. Since the connection had been released on 26.12.2002, the present petitioner made a statement that he does not want to press the complaint since the electricity connection had been released in his favour. Thereafter respondent No. 2 filed another appeal before the State Commission. This appeal was disposed of by the Commission vide order dated 20.5.2004. The Commission in its order noted as follows:-

“x x x x x x. It is also significant to note that Amar Nath, the complainant, is the son of Kishan Chand, appellant, thereby indicating an unfortunate dispute between father and son. Be that as it may, all that we can say in order to alleviate the grievance/problem of the appellant-Kishan Chand is that in case he has any grievance against the release of the electricity connection to his son-

Amar Nath, it will be open for him to avail of his appropriate legal remedy before the concerned Court/Forum having jurisdiction in the matter. The appeal is disposed of accordingly.”

Reading of the aforesaid quoted portion of the order clearly shows that the appeal filed by respondent No. 2 was dismissed and the State Commission came to the conclusion that if the respondent No. 2 has any grievance, he may avail of any other legal remedy before any other court/forum having jurisdiction in the matter. Surprisingly, though this appeal was disposed of as dismissed, respondent No. 2 filed an execution petition before the District Forum. This execution petition, in our opinion, was not at all maintainable. The District Forum rightly held that there was no order which could be executed and the petition was frivolous and dismissed the same. Thereafter respondent No. 2 filed another appeal before the H.P. State Consumer Disputes Redressal Forum. This appeal was disposed of by the Commission on 13.7.2006. In our considered view, such an appeal was not at all maintainable since there was no dispute between a consumer and the provider of service. There was no dispute between the complainant and the Board. The right of respondent No. 2, if any, was to file a

civil suit and obtain appropriate orders on the same. The District Forum had rightly observed that there was no order to be executed, but the State Commission by a very convoluted reasoning came to the conclusion that the electricity connection had been released in favour of the present petitioner in violation of the orders of the forum. In fact, as pointed out above, there was no order of the forum against the petitioner or against the Board. The first appeal had only been remanded and the Board of its own accord decided to release the electricity connection in favour of the petitioner in respect of the house constructed on Khasra No. 1575 which was not the subject matter of the dispute between the petitioner and respondent No.2 (Khasra No. 1527). We would not like to comment on the order of the Commission since it is a body of concomitant jurisdiction.

After the order of the State Commission was passed, the District Consumer Forum passed another order and thereafter electricity connection of the petitioner was dis-connected on 2.12.2006. The petitioner challenged the order of the Commission before us by filing CWP No. 245 of 2007. He also filed the present petition making an independent prayer that electricity

connection be granted to him in the house constructed by him on Khasra No. 1575.

Mr. Ajay Sharma, learned counsel for the petitioner, has clearly stated before us that he is not claiming any relief qua Khasra No. 1527 in this petition and his relief is confined to the construction raised on Khasra No. 1575. The petitioner has placed before us the sale deed as well as jamabandi which clearly show that he is co-owner in Khasra No. 1575 alongwith respondent No. 2. Respondent No. 2 has filed reply in which he submits that the house has been constructed by him and not by the petitioner. This is a dispute which cannot be decided in the present writ petition. It is, however, obvious that since the year 2001, except for a brief period, this house has not been provided electricity connection. The dispute with regard to the ownership and possession of the house could neither be decided in proceedings under the Consumer Protection Act nor can be decided in writ proceeding. This is purely civil dispute to be decided in a civil suit or any other appropriate proceedings which the parties may deem fit and proper, but we are clearly of the view that such a dispute could not be said to be a consumer dispute by any stretch of imagination. We,

therefore, dispose of this writ petition with a direction to the respondent-Board to restore the electricity connection disconnected on 2.12.2006 in the construction raised in Khara No. 1575 within six weeks from today. The question as to who has raised this construction and who is in possession of this house, is left open to be decided in appropriate proceedings.

No costs.

(Deepak Gupta), J.

August 2, 2007(K)

(V. K. Ahuja), J.